**IN THE HIGH COURT OF JUDICATURE AT BOMBAY**
**CIVIL APPELLATE JURISDICTION**
**SECOND APPEAL NO.914 OF 2006**

Laxman Mahadev Pawar
(since deceased through L.Rs.)
Smt.Abai Laxman Pawar & Ors. ...Appellants

vs.

Vishwanath Khandu Pawar & Ors. ...Respondents

Mr.V.S.Talkute for the Appellants
Mr.R.R.Bhosale for Respondent No.1.

**CORAM: A.S.OKA,J.**
**DATE : JULY 6, 2007.**

**P.C.:**

1. Heard learned counsel for the parties. Second Appeal is preferred by the legal representatives of the original first Defendant. The first Respondent is the plaintiff. The first Respondent filed a suit for partition and separate possession. One of the properties included in the suit property is CTS No.2566. The defence of the predecessor of the Appellant-first Defendant was that there was already a partition effected long back and the said land bearing survey No.2566 was allotted to the father of the first Respondent Khandu. The specific case of the first Defendant is that Khandu sold the said property to one Yadav for the purpose of first Respondent's marriage. The trial court dismissed the suit filed by the first Respondent. In an Appeal, a decree for partition has been passed.

2. The learned Counsel for the Appellants criticised the finding of the Appellate Court on the registered sale deed dated 14th April 1960. He submitted that the Appellate court could not have disbelieved the theory of partition only on the ground that the aforesaid sale deed was executed not only by the father for the first Respondent but by his two brothers viz. Sadashiv and the original first Defendant. He submitted that the contents of the sale deed were not proved and therefore, only on the basis of the sale deed, the District Court ought not to have disbelieved the case made out of the prior partition which was accepted by the trial court. He invited my attention to the oral evidence of the parties.

3. I have considered the submissions. I have perused the notes of evidence. The Appellant No.2 deposed on behalf of the first Defendant. He has stated that CTS No.2566 was allotted to the father of the first Respondent in a partition forty years back. No particulars of the partition are mentioned in the examination-in-chief. The Appellant No.2 himself has referred to the sale deed dated 28th November 1970 executed by the father of the first Respondent. He relied upon the sale deed for contending that the property subject matter of the sale deed was allotted to the share of the father of the first Respondent. According to the case of the Appellants, the father of the first Respondent sold the said property bearing CTS No.2566 for the purpose of marriage of

the first Respondent. When the Appellants themselves relied upon the sale deed, it was for them to explain as to how the names of two brothers of Khandu appeared in the sale deed as vendors. If the father of the first Respondent was the allottee of the said property, then there was no reason for his brothers to sign the sale deed. The deposition of the second Appellant is very vague as regards the particulars/details of the earlier partition.

4. In my view, the Appellate court was right in recording a finding of fact that the factum of partition pleaded by the Appellant was not established. There is no reason to interfere with the said finding of fact. Once, the defence of the earlier partition was disbelieved, there is no reason to disturb the decree of partition passed by the Appellate Court. No substantial question of law arises. Second Appeal is dismissed with no order as to costs.

**JUDGE**